Toh Kheng Heng & Anor v Ahmad Fauzi bin Mohd Taufek

HIGH COURT (PENANG) — ORIGINATING SUMMONS NO 24-283-93
SELVENTHIRANATHAN JC
8 NOVEMBER 1993

Land Law *— Notice to quit — Plaintiffs claimed to have bought land from previous owner with vacant possession and later entered into sale and purchase agreement to sell land — Defendant and others were in occupation thereof — Plaintiffs issued notice to quit on defendant — Defendant failed to give up possession of land — Whether defendant merely a a gratuitous licensee*

Land Law *— Notice to quit — Plaintiffs claimed defendants in occupation of land without their consent, licence or agreement and also without the consent of the authorities and their occupation of the land was therefore unlawful — Whether plaintiffs could file application under O 89 of the Rules of the High Court 1980 to evict defendant — Rules of the High Court 1980 O 89*

Land Law *— Notice to quit — Plaintiffs claimed defendants in occupation of land without their consent, licence or agreement and also without the consent of the authorities and their occupation of the land was therefore unlawful — Whether defendant had equitable right to occupy land — Rules of the High Court 1980 O 89*

Civil Procedure *— Stay of execution — House to be demolished as a result of court order — Whether if any appeal to the Supreme Court even if successful, would be rendered nugatory, was special circumstance for court to order stay of execution*

The plaintiffs were the registered owners of a piece of land ('the land') which they claimed to have bought from the previous owner with vacant possession. The plaintiffs later entered into a sales and purchase agreement to sell the land and consequent to this transaction, the plaintiffs visited the land and discovered that the defendant and others were in occupation of it. The plaintiffs then issued a notice to quit on the defendant requiring him to give up vacant possession or to vacate the house he was occupying within two months from the date of notice. Despite the notice to quit, the defendant failed to give up possession of the land. The plaintiffs therefore filed an application under O 89 of the Rules of the High Court 1980 ('the RHC') for an order that they be given possession of the land. The plaintiffs claimed that the defendants were in occupation of the land without their consent, licence or agreement and also without the consent of the authorities, and by reason thereof, their occupation of the land was unlawful.

The defendant filed an affidavit-in-reply stating that it was not possible that the plaintiffs had bought the land from the previous owners with vacant possession. He therefore claimed that the notice

A to quit served upon him was not valid under the law as he had an equitable right to occupy the land.

Held, allowing the plaintiffs' application:

(1) The defendant himself did not seek to confer or claim any higher status as to his occupation of the land than as a licensee. He was therefore a gratuitous licensee and in that capacity, his licence to occupy the land was properly terminated when the notice to quit was served on him. Thereafter he became a trespasser on the land and the plaintiffs were entitled to apply under O 89 for the defendant to be evicted.

(2) Order 89 was the proper procedure to be applied in this case. The defendant could not equate his position with that of the appellants in *Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor*[1] on which the defendant sought to rely. In that case, the appellants had shown that they had an arguable case by submitting affidavit evidence to show that they had acquired a legal right or expectation to be issued with land titles. Here, the defendant did not for one moment contend that a licence or consent had been granted to him to occupy the land by the plaintiffs or their predecessors in title. There were no arguable issues making the summary procedure in O 89 improper in the present case.

(3) Order 89 applies to situations where persons entered into occupation of land without the licence or consent of the person entitled to possession or any predecessor-in-title of his as well as to situations where persons enter into occupation of land with a licence from the person entitled to possession or any predecessor-in-title of his but subsequently remains in such occupation without the licence or consent of the person entitled to possession of the land or a predecessor in title of his. Thus, the defendant's objection to use of the procedure to evict licencees failed.

(4) The defendant's claim to protection by equity could not stand on the facts. The National Land Code 1965 does not provide for principles of equity. In order for equity to intervene, the defendant had to show evidence of some inducement or encouragement by the plaintiffs or some expectation held out by them to him on the strength of which he had expended money on the land. There was nothing on the facts to support the application of any equitable doctrine in favour of the defendant.

(5) Although the defendant's house could be demolished as a result of the order of this court, a stay of execution was not granted to the defendant pending his appeal to the Supreme Court. The fact that any appeal to the Supreme Court even if successful, would be rendered nugatory, was not by itself a special circumstance for the court to order a stay of execution. The purpose of the legislature in enacting the O 89 summary procedure would be defeated as

such an argument would be raised in virtually all cases where the procedure is used.

[Bahasa Malaysia summary

Plaintif merupakan tuanpunya berdaftar sebidang tanah ('tanah itu') yang didakwa oleh mereka telah dibeli dari tuanpunya terdahulu dengan milikan kosong. Plaintif kemudiannya telah mengikat suatu perjanjian jualbeli untuk menjual tanah itu dan berikutan transaksi itu, plaintif telah pergi melihat tanah itu dan telah mendapati bahawa defendan dan beberapa orang yang lain sedang menduduki tanah itu. Plaintif kemudiannya telah mengeluarkan suatu notis keluar keatas defendan dan memintanya supaya menyerahkan milikan kosong atau supaya mengosongkan rumah yang didiaminya dalam tempoh dua bulan dari tarikh notis itu. Walaupun terdapat notis keluar itu, defendan telah gagal memberi milikan kosong tanah itu. Oleh itu, plaintif telah memfailkan suatu permohonan di bawah A 89 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') untuk suatu perintah supaya mereka diberi milikan tanah itu. Plaintif telah mendakwa bahawa defendan menghuni tanah itu tanpa kebenaran, lesen atau persetujuan mereka dan juga tanpa kebenaran pihak-pihak berkuasa, dan oleh kerana itu, penghunian tanah itu adalah menyalahi undang-undang.

Defendan telah memfailkan suatu afidavit jawapan dan menyatakan bahawa adalah tidak mungkin bahawa plaintif telah membeli tanah itu daripada tuanpunya terdahulu dengan milikan kosong. Oleh itu, beliau mendakwa bahawa notis keluar yang telah disampaikan keatasnya adalah tidak sah dari segi undang-undang kerana beliau mempunyai suatu hak ekuiti untuk menghuni tanah itu.

Diputuskan, membenarkan permohonan plaintif:

(1) Defendan sendiri tidak cuba untuk memberi atau menuntut suatu kedudukan yang lebih tinggi daripada sebagai seorang pemegang lesen untuk penghunian tanah itu. Oleh itu, beliau merupakan seorang pemegang lesen percuma dan dengan itu, lesen beliau untuk menghuni tanah itu telah ditamatkan dengan betul apabila notis keluar disampaikan ke atasnya. Selepas itu, beliau telah menjadi seorang penceroboh di atas tanah itu dan plaintif berhak memohon di bawah A 89 supaya defendan diusir.

(2) Aturan 89 merupakan prosedur yang patut digunakan di dalam kes ini. Defendan tidak boleh menyamakan kedudukan beliau dengan kedudukan perayu di dalam *Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor*[1] yang defendan cuba bergantung kepada. Di dalam kes itu, perayu telah menunjukkan bahawa mereka mempunyai suatu kes yang dapat dipertikaikan dengan menyerahkan keterangan afidavit untuk menunjukkan bahawa mereka telah mendapat suatu hak dan harapan yang sah untuk dikeluarkan dengan hakmilik tanah. Di dalam kes ini, defendan tidak untuk seketikapun bertikai bahawa suatu lesen atau kebenaran

telah diberi kepadanya oleh plaintif atau pendulu dalam hakmilik untuk menghuni rumah itu. Tidak terdapat isu yang boleh dipertikaikan yang membuat penggunaan prosedur terus di dalam A 89 tidak berpatutan dalam kes ini.

(3) Aturan 89 terpakai kepada keadaan di mana seseorang menghuni tanah itu tanpa lesen atau kebenaran orang yang berhak memiliki tanah itu atau seseorang pendulu dalam hakmiliknya dan juga kepada keadaan di mana seseorang menghuni tanah tersebut dengan lesen daripada orang yang berhak mendapat memiliki tanah itu atau seseorang pendulu dalam hakmiliknya tetapi kemudiannya tetap menghuni tanah itu tanpa lesen atau kebenaran orang yang berhak memiliki tanah itu atau seseorang pendulu dalam hakmiliknya. Oleh itu, bantahan defendan untuk penggunaan presedur untuk mengusir pemegang lesen telah gagal.

(4) Tuntutan defendan bahawa beliau dilindungi oleh ekuiti tidak boleh berjaya atas fakta-fakta berkenaan. Kanun Tanah Negara 1965 tidak memperuntukkan prinsip-prinsip ekuiti. Supaya ekuiti dapat terpakai, defendan mesti menunjukkan bukti bahawa terdapat dorongan oleh plaintif atau harapan yang telah diberikan oleh mereka kepadanya atas mana beliau telah membelanjakan wang keatas tanah itu. Tidak terdapat apa-apa dalam fakta untuk menyokong pemakaian sebarang prinsip equiti bagi faedah defendan.

(5) Walaupun rumah defendan boleh dirobohkan akibat perintah mahkamah ini, pergantungan pelaksanaan tidak diberikan kepada defendan sementara menantikan rayuannya kepada Mahkamah Agong. Hakikat bahawa sebarang rayuan kepada Mahkamah Agong walaupun berjaya akan dijadikan tidak berkesan, bukan dengan sendirinya suatu keadaan khas untuk mahkamah memerintahkan suatu pergantunggan perintah pelaksanaan. Tujuan badan perundangan menggubal prosedur terus dalam A 89 akan dijadikan tidak berkesan memandangkan yang hujah sebegini akan ditimbulkan di dalam hampir kesemua kes-kes di mana prosedur ini digunakan.]

Cases referred to

1 *Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343 (distd)
2 *Titular Roman Catholic Bishop of Malacca v Teoh Teik Seng & Anor* [1990] 2 CLJ 306 (refd)
3 *Hotel Ambassador (M) Sdn Bhd v Seapower (M) Sdn Bhd* [1991] 1 MLJ 221 (refd)
4 *Wee Kang Whye & Anor v Lee Woon Tong* [1974] 1 MLJ 7 (distd)
5 *Bristol Corp v Persons Unknown* [1974] 1 All ER 593 (refd)
6 *Greater London Council v Jenkins* [1975] 1 All ER 354 (refd)
7 *Yeap Cheng Hock v Kajima-Taisei Joint Venture* [1973] 1 MLJ 230 (refd)

8 *Che Wan Development Sdn Bhd v Co-operative Central Bank Bhd* [1989] 3 MLJ 40 (refd) A
9 *Serangoon Garden Estate Ltd v Ang Keng* [1953] MLJ 116 (refd)

Legislation referred to
Rules of the High Court 1980 O 89 r 1
Rules of the Supreme Court O 133 r 1 [Eng] B

Ong Guat Ean (*Wong-Chooi & Mohd Nor*) for the plaintiffs.
Donald Joseph Franklin (Assistant Legal Aid Director) for the defendant.

Selventhiranathan JC: The plaintiffs filed this application by way of originating summons under O 89 of the Rules of the High Court 1980 ('the RHC') for an order that they be given possession of all that piece of land known as Holding 858, Mukim 12, South West District, Penang on the ground that they were entitled to possession thereof and that the persons in occupation thereof were doing so without their licence or consent. The summons named the defendant and other unnamed persons as being in occupation. C D

This application was supported by the affidavit of the first plaintiff, Toh Kheng Heng, who affirmed it on behalf of himself and the second plaintiff, Md Saad bin Andak. The first plaintiff averred that he and the second plaintiff were the registered owners of the land and that they had bought it from the previous owners by an agreement dated 22 August 1991. He stated that it was the intention of the plaintiffs at all material times to purchase the land with vacant possession and this was a term of the agreement. However, the defendant, and other persons who were not known, had entered upon the land or continued to occupy it without their licence or consent. On 9 July 1992, the plaintiff had entered into a sale and purchase agreement with Orange Crush (M) Sdn Bhd to sell the land to the latter. Consequent to this transaction, the plaintiffs had visited the land and discovered that the defendant and others were in occupation of it. E F

On 24 November 1992, the plaintiffs, through their solicitors, issued a notice to quit to the defendant requiring him to give up vacant possession or to vacate the house which he was occupying within a period of two months from the date of notice. Despite the notice to quit, the defendant had failed, refused or neglected to give up vacant possession of the land to the plaintiffs. The first plaintiff further averred that the defendant, and other persons whom he did not know, were in occupation of the land without the consent, licence or agreement of the plaintiffs and also without the consent of the authorities, and by reason thereof, their occupation of the land was unlawful. The plaintiffs had no knowledge of the persons occupying the land who were not named in this originating summons apart from the defendant. G H

The defendant filed an affidavit in reply stating that it was not possible that the plaintiffs had bought the land from the previous owners with vacant possession because house No 460 Block J which was erected upon holding 858 Mukim 12 had been built in 1966 by the defendant's father with the consent of the landowner at that time. The defendant's father was Mohd I

Tawfek bin Mohd Hussain and his mother was Fatimah bte Siraj. They had resided at that address until their demise in 1972 and 1984, respectively. The local authority had also given a number to the house and assessment had been collected up to the present date. He exhibited a copy of the notice of assessment for the first half of 1992 in the name of Che Fatimah bte Siraj. (However, the notice did not show whether the assessment had been paid.)

The defendant also appended to his affidavit an electricity bill dated 29 May 1985 and a water supply bill dated 17 June 1985, both in the name of Fatimah bte Siraj. (However, both these bills again did not have any proof of payment either through proper receipts or machine imprints, which is the usual mode of acknowledgement. It is to be noted that both these bills were for May and June 1985, when the defendant by his own admission was no more in occupation of the land and the houses erected on it.)

The defendant further averred that he had stayed in the house from 1966 until the present, except for a period from 1984 until January 1988 when he had left the house. In February 1988, he had returned and reoccupied the house up to the present. He claimed that apart from him, his sister Fadzillah bte Mohd Taufek was also staying in the house. His second child named Mohamad Alif was born on 9 April 1991 when he was staying in the house. A copy of the birth certificate was exhibited. (However, the birth certificate under the column 'tempat tinggal ibu yang biasa' (the usual place of stay of mother) bore the address 106, Rumah Murah Awam II, 34100 Selama, Perak and not that of the house in question.) The defendant also claimed that apart from him and his younger sister, an older brother by the name of Ahmad Fahmi bin Mohd Taufek had also previously stayed in the house but had since shifted elsewhere.

The defendant claimed that the notice to quit which had been served upon him was not valid under the law as he had an equitable right to occupy the land.

He also alleged that the plaintiffs had not acted in good faith and without notice had attempted to drive him and his younger sister off the land by causing piling of earth which had resulted in water being trapped and flooding his house during heavy rain. He had suffered damage as a result.

The defendant further disputed that his occupation of the land was illegal and without the licence or consent of the plaintiffs. The ownership of the land had been transferred to the plaintiffs on 30 November 1991 and it was strange that the plaintiffs did not know of his occupation thereof because, prior to the present proceedings, the plaintiffs had made him an offer of compensation of RM3,000 to vacate the land which had been increased to RM30,000 but that no settlement had been reached.

As the defendant had questioned the authority of the first plaintiff to affirm the affidavit on behalf of himself and the second plaintiff, an affidavit was filed by the second plaintiff adopting in toto the contents of the affidavit affirmed by the first plaintiff.

At the hearing of the application, Cik Ong Guat Ean appeared for both the plaintiffs and Encik Donald Franklin, the assistant director of the Legal Aid Bureau, appeared for the defendant.

Cik Ong submitted that the defendant had never had any licence from the plaintiffs to occupy the land as the intention of the plaintiffs had been very clear from the outset when they had purchased the land with vacant possession. They had given the requisite notice to quit to the defendant and the continued presence of the defendant on the land was tantamount to his being a trespasser. Even if the defendant was a licensee, he was only a gratuitous licensee and the notice to quit had the effect of terminating his licence. Although the defendant claimed that he was protected by equity, she submitted that equity did not arise here. Principles of equity are not provided for under the National Land Code 1965, and for equity to intervene there must be evidence of some inducement or encouragement by the landlord or expectation held out to the tenant on the strength of which he had expended money on the land. Such evidence was absent here. The defendant had never been a tenant of the predecessors-in-title to the plaintiffs and he could not claim any tenancy. Neither was he a tenant nor a licensee of the plaintiffs. No inducement had been held out to him for him to claim to be protected by equity.

Encik Donald Franklin submitted that this case did not come within the scope of O 89 of the RHC which was applicable to squatters or trespassers who were in occupation of land illegally. The defendant claimed to occupy the land as a licensee, and even though there was a break of four years in his occupation of the land, his younger sister and other members of his family had continued to occupy it.

Encik Donald also contended that the notice to quit had only been issued after the land had been sold to Orange Crush (M) Sdn Bhd. The plaintiffs had not issued any notice to quit for a period of one and a half years after having bought the land and he contended that this was sufficient inducement to the defendant to make him a licensee. At the time that the plaintiffs bought the land, they had no intention of evicting the defendant. Furthermore the local authority had given a number to the house erected on the land, and the defendant was a licensee who had a right in equity to occupy the land. The previous landowners also had not issued any notice to quit. Encik Donald relied on the case of *Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor*[1] to support his contention that an application under O 89 was not the proper procedure to be adopted in this case, and the matter should instead be tried by way of writ action. The parents of the defendant had entered the land with the consent of the landowners at that time and by virtue thereof, the defendant was in lawful occupation of the land. He also referred to the case of *Titular Roman Catholic Bishop of Malacca v Teoh Teik Seng & Anor*[2] as further supporting his contention that the procedure under O 89 could not be resorted to in the case of a licensee.

He also submitted that the plaintiff had not complied with O 89 r 3(b) in that the affidavit in support of the application did not specify the circumstances in which the land had been occupied without the licence or consent of the plaintiffs and in which their claim to possession arose. The plaintiffs did not state the circumstances in which the defendant was in occupation of the land when it was purchased. There were triable issues for determination.

Cik Ong in reply submitted that the exhibits which purported to relate to the occupation of the land did not convey to the occupants the right to occupy it in perpetuity. Bohari was distinguishable on the facts. The temporary occupation licence there had expired in 1984 and the O 89 application had been filed in 1990. After the expiration of the temporary occupation licence, no positive notice had been given to the occupiers of the land, unlike the present case where clear notice had been given in November 1992. There was also no evidence of any inducement held out to the defendant by the plaintiffs here.

She submitted that the case of *Titular Roman Catholic Bishop of Malacca*[2] arose under the Control of Rent Act 1966 and was not applicable. In the present case, there was no claim that even the prior occupation of the land by the parents of the defendant had created a tenancy. The plaintiffs had never regarded the defendant as a licensee.

She submitted further that O 89 r 3(b) had been complied with in that the first plaintiff had set out the facts required to be specified pursuant to that rule in his affidavit in support of the application and that the plaintiffs as the registered owners had an interest in the land. She therefore prayed for an order in terms of the application.

At the close of submissions, Encik Donald, on being asked, stated that as the defendant claimed that he was a licensee only, and had no higher interest in the land, his licence to occupy the land could not be protected under the National Land Code 1965.

Having considered the arguments advanced on behalf of both parties, I made an order in terms of the application for the defendant to deliver up vacant possession of the land on or before 2 November 1993, ie after one month of my order. I did not give any longer period for the defendant to move out of the land as the plaintiffs had charged the land to Malayan Banking Bhd and I was informed that they were paying interest of RM2,400 a month on the loan, and the defendant had been given notice to quit almost a year ago.

In granting the order for the defendant to give up vacant possession of the land, I took into consideration the fact that the defendant himself claimed that he was a bare licensee on the land. His claim to occupy the land was founded upon its prior occupation by his parents from 1966 until the demise of his father in 1972 and his mother in 1984. He claimed that they occupied the land with the consent of the landowner at that time. The bills for electricity and water exhibited to the affidavit of the defendant were for the months of May and June 1985 and they were in the name of Fatimah bte Siraj, the mother of the defendant. The notice of assessment for the first half of 1992 was in the name of Che Fatimah bte Siraj.

It would appear that the consent given by the parents of the defendant to occupy the land by the previous landowner came to an end when the defendant's mother died in 1984. The defendant did not claim that any ground tenancy had been granted to his parents by the landowner at that time and his parents therefore were only gratuitous licensees and their licence to occupy the land came to an end with the death of his mother. By the defendant's own admission, he had moved away in 1984 and returned

to occupy the house in February 1988. However, the birth certificate of his son who was born on 9 April 1991 which was exhibited in his affidavit showed the usual place of stay of the mother of the child to be 104, Rumah Murah Awam II, 34100 Selama, Perak. This detracted from his claim that he had been in continuous occupation of the land since February 1988.

The defendant himself did not seek to confer or claim any higher status as to his occupation of the land than as a licensee. He was a gratuitous licensee and in that capacity his licence to occupy the land was properly terminated when the notice to quit was served on him: see *Hotel Ambassador (M) Sdn Bhd v Seapower (M) Sdn Bhd.*[3] Thereafter he became a trespasser on the land and the plaintiffs were entitled to apply under O 89 for his eviction.

Bohari's case[1] is distinguishable on the facts as there, the appellants and their forefathers had been in long occupation of the land and they had applied to the state authority for titles to the land. In 1980, the State Executive Council approved the alienation of the land to the appellants who were also assured by a member of the State Executive Council that they would be given titles to the land. Initially temporary occupation licences were issued after which separate titles were to be issued. After the expiry of the temporary occupation licences, the appellants contended that they had acquired a legal right or expectation to be issued with land titles. Therefore, they argued that the respondent was not entitled under O 89 to evict them as trespassers without payment of compensation. They claimed that they were either licensees holding over or lawful occupiers of state land with the continued consent of the State Executive Council under the approved alienation. As such O 89 was not the proper procedure to be adopted and instead proceedings should have been instituted by writ. The Supreme Court held that the appellants in *that particular case* had sufficiently shown by affidavit evidence that they had an arguable case in that they had occupied the land for three years under temporary occupation with the continued consent of the state government by virtue of the alienation already approved prior to the issuance of the temporary occupation licences. In the view of the Supreme Court, the alleged continued consent of the state government to the appellants' occupation notwithstanding the temporary occupation licences was one of the serious issues to be tried. Mohamed Azmi SCJ stated as follows at p 651 of the report:

> ... On the facts, we hold that there are triable issues on the absence of either licence or consent as alleged by the respondent. Evidence viva voce is required not only on the alleged consent of the respondent to the appellants' occupation rendering their entry lawful, but also on whether the approval of the state authority to the alienation of the lands to the appellants and the other occupiers had been given in 1980 under s 42 of the National Land Code 1965.

In that case a letter was exhibited which contained the approval of the state authority to the alienation of the land to the appellants.

It is abundantly clear from the facts of the present case that the defendant could not equate his situation with that of the appellants in *Bohari.*[1] He never for one moment contended that licence or consent had been granted to him to occupy the land by the plaintiffs or their predecessors in title. In

this regard, I found that the case of the defendant could not at best even be equated with the case of *Wee Kang Whye & Anor v Lee Woon Tong*,[4] a decision of Choor Singh J of the High Court of Singapore. In that case, the defendant was permitted to occupy the plaintiffs' land and to build a temporary structure on it on condition that he had to vacate the place without any compensation when required to do so. The plaintiffs agreed to sell the property with vacant possession and offered the defendant $5,000 as compensation for him to move out. The defendant apparently agreed to accept the $5,000 and to vacate the hut but subsequently changed his mind and refused to move out. The plaintiffs thereupon brought an action for possession. It was held that the plaintiffs had granted the defendant a temporary gratuitous licence which they were entitled to revoke at will. The defendant acquired no rights at all, neither in law or equity. The plaintiffs were therefore entitled to an order of possession against the defendant.

The position of a gratuitous licensee under the law is well set out in *Wee Kang Whye*[4] by Choor Singh J at pp 9–10 of the report:

> The arrangement under which the defendant was permitted to construct his temporary structure on the plaintiffs' land amounted in law to a gratuitous licence. Such a bare licence without any contractual term in favour of the licensee can be revoked at the will of the licensor. See *Winter Garden Theatre Ltd v Millennium Productions Ltd* [1948] AC 173. Under the circumstances of this case the defendant had no legal right to remain on the plaintiffs' land after he was requested to move out. The plaintiffs not only gave him reasonable notice that he had to move out when their sale of the land was completed but also offered him compensation in the sum of $5,000 for moving out. In my judgment the defendant became a trespasser when he refused to move out after due notice.
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> Counsel for the defendant submitted that the defendant by virtue of the expenditure incurred by him in constructing the temporary structure, had an equitable right to remain on the land as long as he wished and that the plaintiffs were therefore not entitled to vacant possession of the area occupied by the defendant. Counsel cited *Ramsden v Dyson* (1866) LR 1 HL 129; *Plimmer v Wellington Corp* (1884) 9 App Cas 699; and *Inwards v Baker* [1965] 1 All ER 446 in support of his submission. In my judgment, counsel had misapprehended the ratio decidendi of the cases cited by him. In *Khew Ah Bah v Hong Ah Mye* [1971] 2 MLJ 86, I had occasion to consider all these authorities concerning equitable estoppel and this is what I stated in that case, at p 88:
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> > ' ... It is quite plain from these authorities that, if the owner of land requires another, or indeed, allows another to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to enable him to stay there. And the case of a tenant who is paying ground rent for the use of the land on which he has been allowed to erect a dwelling-house is even stronger. He has a tenancy coupled with an equity. In such a case the landlord cannot recover possession of his land by merely terminating the tenancy; he must also satisfy the equity. In *Plimmer*'s case the Privy Council opined that the court must look at the circumstances in each case to decide in what way the equity can be satisfied. In the recent case of *Inwards v Baker*, Lord Denning MR explained the doctrine as follows: "It is an equity well recognized in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that

expenditure, he will be allowed to remain there. It is for the court to say in which way the equity can be satisfied."' A

In my opinion counsel for the defendant failed to appreciate that the doctrine of equitable estoppel applies only when the tenant has been led to expend money on the land under an expectation created or encouraged by the landlord that the tenant will as a result of that expenditure be able to remain there. For equity to intervene there must be evidence of some inducement or encouragement by the landlord or some expectation held out by him to the tenant on the strength of which the tenant expended money on the land. As explained by Lord Russel of Killowen in *Canadian Pacific Railway Co v R* [1931] AC 414 at p 429: ' ... the foundation upon which reposes the right of equity to intervene is either contract or the existence of some fact which the legal owner is estopped from denying.' B C

Upon the facts of the present case I could find no foundation for the application of any equitable doctrine in favour of the defendant. There was no conduct on the part of the plaintiffs which induced the defendant to build in the belief that rights in perpetuity would be acquired. There was nothing upon which to ground any estoppel. The facts were all the other way. It was the defendant who begged the plaintiffs to allow him to construct a temporary structure on their land. And before permitting him to do so they made it quite clear to him that he would have to vacate without compensation when requested to do. He accepted this condition and proceeded to build his temporary structure. No expectation was created by the plaintiffs, by word or by conduct, in the mind of the defendant that he would be allowed to stay on their land for any definite or indefinite period. Even on the defendant's own evidence, 'nothing was agreed'. Under the circumstances there was nothing which entitled the defendant to claim relief in equity. D E

Furthermore, even if the defendant in the present case were to claim that he was occupying the land by virtue of the consent which had been given to his parents, his right to continue to occupy the land came to an end when he gave up possession of the land by moving away in 1984. On his return in 1988, his resumption of occupation of the land was as a trespasser or at best a gratuitous licensee whose interest was terminable at will. There was no agreement or understanding of any sort between the defendant and the plaintiffs' predecessors in title or between the defendant and the plaintiffs whereby he was allowed to come on to the land in 1988 and occupy it. In fact the plaintiffs claimed that they were not aware of the defendant's existence upon the land and the previous owners had sold the land to them with vacant possession as evidenced by the sale and purchase agreement. This the defendant has not disputed in any way. Even if the defendant was allowed to occupy the land by the plaintiffs' predecessors-in-title and subsequently by the plaintiffs themselves, the defendant was only a gratuitous licensee and the consent of the plaintiffs' predecessors-in-title or that of the plaintiffs to his occupation of the land did not have the effect of conferring upon him any rights in equity. He was a sojourner on the land at the will of the plaintiffs' predecessors-in-title and subsequently at the will of the plaintiffs. Upon the issue of the notice to quit on 24 November 1992 and its crystallization two months later, the defendant ceased having any right to remain on the land, his licence to occupy the land having been lawfully terminated upon the expiry of the notice to quit. F G H I

Order 89 r 1 reads:

Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this order.

In *Bristol Corp v Persons Unknown*,[5] Pennycuick V-C interpreted the equivalent English O 113 r 1 of the Rules of the Supreme Court as follows at p 595 of the report:

> Looking at the words of that rule, it seems to me to be clear that the order covers two different states of fact. The first is that of some person who has entered into occupation of the land without the licence or consent of the person entitled to possession or any predecessor in title of his, and seondly that of the person who entered into occupation of the land with a licence from the person entitled to possession of the land or any predecessor in title of his but who remains in such occupation without the licence or consent of the person entitled to possession or any predecessor in title. That that is the true construction appears to be perfectly clear from the use of the word 'or' and if the rule did not cover the second state of affairs which I have mentioned, that is to say of entry with licence and remaining in occupation without licence, then the words 'or remained' would, so far as I could see, have no significant meaning at all. Obviously there never could be proceedings against someone who had entered but did not remain in occupation of the land.

The Court of Appeal of England had occasion to consider Pennycuick V-C's interpretation of the said rule in *Greater London Council v Jenkins*.[6] Lord Diplock had this to say at p 356 of the report:

> Pennycuick V-C pointed out that it is clear beyond a peradventure that this order applies to cases where a person who is alleged to be a trespasser was previously on the premises by licence.
>
> In the course of his judgment in that case Pennycuick V-C did suggest that the judge or the court had a discretion whether to permit this summary procedure to be used in cases where there had been, as in this case clearly, a licence to occupy originally. For my part, I am unable to see that the court has any discretion to prevent a plaintiff using this procedure where the circumstances are those described in the rule. So, while agreeing, as I do, with Pennycuick V-C's construction of the rule, I personally would disagree that the court has any discretion to prevent the use of this procedure where circumstances are such as bring them within its terms.

In Malaysia in *Yeap Cheng Hock v Kajima-Taisei Joint Venture*,[7] Syed Agil Barakbah J (as he then was) specified the indicia that attach to a licensee in the following terms at p 232 of the report:

> At common law a licensee is one who is lawfully on the premises, in the sense that he is not a trespasser, but does not come within the description of an invitee because he does not enter on business which concerns the occupier. He is there with the permission of the occupier given as a matter of grace or pleasure and not as a matter of business. 'Those who are invited as guests, whether from benevolence or for social reasons, are not in law invitees but licensees. The law does not take account of the worldly advantage which the host may remotely have in view.'

(See *Charlesworth on Negligence* (4th Ed) at p 207 para 438 and *Latham v Johnson* [1913] 1 KB 398 at p 410 per Hamilton LJ.)

Having considered the law and applied it to the facts of the present case, I was of the view that the defendant had no basis or claim whatsoever upon which he could resist the application by the plaintiffs for vacant possession of the land. Right from the inception of his so-called claim in connection with the land through his parents in 1966 up to the present, there had not been any dealing whatsoever between his parents and himself on the one hand and the landowners, past or present, on the other. Upon the termination of the licence by a valid notice to quit, his tenuous link with the land which was dependent upon the landowners' consent came to an effective end. In my view, this was a clear case where O 89 was applicable and, in the words of Lord Diplock, I had no discretion 'to prevent the use of this procedure where circumstances are such as to bring them within its terms'.

I therefore made an order in terms of the application.

On 8 November 1993, learned counsel for both parties appeared before me upon an application by the defendant that he be given leave to appeal to the Supreme Court and that there be a stay of execution of my order of 2 October 1993 until the appeal had been disposed of.

It was contended on behalf of the defendant that there were special circumstances in this case which merited a stay and the case of *Che Wan Development Sdn Bhd v Co-operative Central Bank Bhd*[8] was cited in support. The same case as well as *Serangoon Garden Estate Ltd v Ang Keng*[9] were cited as authorities to resist the application for stay. The defendant claimed that should my order of 2 October 1993 be put into effect, the house which he was occupying on the land would be demolished and any appeal to the Supreme Court even if successful would be rendered nugatory. It would not be possible to put him back into the same position as he had been in before.

In my view, this by itself was not a special circumstance for me to order a stay of execution. The same argument could be raised in virtually all cases for possession of land under O 89 where the occupier thereof has to be evicted pursuant to a court order and any building erected thereon consequentially demolished. It would therefore lead to a situation where the intention of the legislature in providing for the O 89 procedure to be adopted to bring summary proceedings for possession of land would be defeated. However, the court is not without sympathy to a person in the position of the defendant and I therefore intimated to learned counsel for the defendant that I would make the grounds of judgment available as soon as possible so that the matter could be dealt with expeditiously by the Supreme Court. I have accordingly done so by immediately writing this judgment.

Application allowed.

Reported by Jeanne Tan